Criminal Law and Procedure
Spring 2001

Supplement

Legal Training Section
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The material in this legal update is provided for informational purposes only. Before applying, officers should contact the local prosecutors for their interpretations.

CRIME VICTIM RIGHTS

Add to page 3-1 under victim

Restitution may include unrecovered buy money

📖 As part of sentencing for delivering marijuana, defendant was ordered to pay $7,650 in restitution to the NET team for the buy money that was used to set up the charges. The Court of Appeals upheld the order based on the Crime Victim Right's act. "Therefore, we conclude from the plain language of the statute, as well as from the intent behind the CVRA, that the Legislature intended to permit narcotics enforcement teams to obtain restitution of buy money lost to a defendant's criminal act of selling controlled substances." People v Crigler, C/A No 220111 (January 26, 2001)

CRIMES AGAINST PERSONS

Add to page 4-3

There is no duty to retreat from one's porch

📖 Where the suspect argued self-defense while he stood on his porch, he had no duty to retreat. Michigan recognizes that the general rule regarding self-defense is that retreat is required where it is safe to do so. The exception to this rule is that a "man is not obliged to retreat if assaulted in his dwelling." The court reviewed applicable statutes and held that for purposes of this rule, the porch area is included in the definition of a dwelling. People v Canales, C/A No. 221452 (December 12, 2000)

Add to conspiracy on page 4-3

One man conspiracy rule

📖 Michigan is a "no one-man conspiracy" state. If two people are charged with a crime and one is acquitted and one is convicted, the conspiracy charges must be dropped. The charges do not have to be

dropped if the indictment refers to unknown or unnamed conspirators and there is sufficient evidence to show the existence of a conspiracy between the convicted defendant and these other conspirators. People v Williams, 240 Mich. App. 420 (2000)

Add to Assault and Battery on page 4-4

Assault and Battery does not apply to reasonable amount of force used by teachers

PA 461 and PA 462 of 2000 – MCL 750.81 (immediate effect)

MCL 750.81 (assault and battery) does not apply to a volunteer or contractor of a local or immediate school board or public school academy who uses reasonable physical force upon a pupil to maintain order and control for one or more of the following reasons:

- To restrain or remove a pupil whose behavior is interfering with the orderly exercise of a school function and the pupil has refused to comply with a request to stop.
- For self-defense or defense of another.
- To stop the student from hurting himself or herself.
- To quell a disturbance that threatens injury to any person.
- To obtain possession of a weapon or other dangerous object.
- To protect property.

A volunteer or contractor by a local or intermediate school board or public school academy shall not inflict corporal punishment. Corporal punishment is the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means to discipline. This does not apply to pain caused by reasonable physical activities associated with athletic training.

Add to page 4-9

Sale of children

P.A. 205 effective 9-1-00 (MCL 750.136c)

This acts makes it a felony to transfer or attempt to transfer legal or physical custody of a child under the age of 16 for money or other valuables except as otherwise permitted by law.

Add to child abandonment on page 4-9

Safe Delivery - PA 232 of 2000 (Jan 1, 2001)

MCL 750.135 allows for the safe delivery of newborn to emergency provider.

- A father or mother of a child under the age of 6 years, or another individual, who exposes the child in any street, field, house, or other place, with intent to injure or wholly to abandon the child, is guilty of a felony, punishable by imprisonment for not more than 10 years.

- Except for a situation involving actual or suspected child abuse or child neglect, it is an affirmative defense to a prosecution under subsection (1) that the child was not more than 72 hours old and was surrendered to an emergency service provider. A criminal investigation shall not be initiated solely on the basis of a newborn being surrendered to an emergency service provider.

- As used in this section an "Emergency service provider" means an uniformed employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty.

MCL 712.3. Conduct of emergency service provider.

- If a parent surrenders a child who may be a newborn to an emergency service provider, the emergency service provider shall comply with the requirements of this section under the assumption that the child is a newborn. The emergency service provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody. The emergency service provider shall make a reasonable effort to do all of the following:

(a) Take action necessary to protect the physical health and safety of the newborn.

(b) Inform the parent that by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(c) Inform the parent that the parent has 28 days to petition the court to regain custody of the newborn.

(d) Provide the parent with written material approved by or produced by the Family Independence Agency that includes, but is not limited to, all of the following statements:

(i) By surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(ii) The parent has 28 days after surrendering the newborn to petition the court to regain custody of the newborn.

(iii) After the 28-day period to petition for custody elapses, there will be a hearing to terminate parental rights.

(iv) There will be public notice of this hearing and the notice will not contain the parent's name.

(v) The parent will not receive personal notice of this hearing.

(vi) Information the parent provides to an emergency service provider will not be made public.

(vii) A parent can contact the safe delivery line established under section 20 of this chapter for more information.

➢ After providing a parent with the information described in subsection (1), an emergency service provider shall make a reasonable attempt to do all of the following:

(a) Encourage the parent to provide any relevant family or medical information.

(b) Provide the parent with the pamphlet produced under section 20 of this chapter and inform the parent that he or she can receive counseling or medical attention.

(c) Inform the parent that information that he or she provides will not be made public.

(d) Ask the parent to identify himself or herself.

(e) Inform the parent that, in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent, and then ask the parent to identify the other parent.

(f) Inform the parent that the child placing agency that takes temporary protective custody of the newborn can provide confidential services to the parent.

(g) Inform the parent that the parent may sign a release for the newborn to be used at the parental rights termination hearing.

Add to Vulnerable Adult Abuse on page 4-13

📖 The defendant was charged with one count of second degree vulnerable adult abuse under MCL 750.145n(2). To prove this charge, the prosecutor must introduce evidence that the defendant engaged in a reckless act or reckless failure to act ***causing*** the injuries to the victim. People v Hudson, 241 Mich. App. 268 (2000)

Add to personal injury on page 4-15

📖 Mental anguish under the CSC statute may include threats of future harm and being forced to beg. In this case, the victim was told if she did not cooperate, she would be turned over to the Mafia. She was also told that if she preformed a sexual act, she would be released. People v Mackle, 241 Mich. App. 204(2000)

Add to page 4-15

📖 Statute of limitations is stopped when the defendant moves out of state. In this case, the defendant assaulted one of his students in 1983. He moved to Florida in 1987. The assault was reported to police in 1995. The statute of limitations to bring charges was tolled in 1987 when he moved out of state. People v Crear, 242 Mich. App. 158 (2000)

Add to force and coercion on page 4-15

Concealment and CSC

📖 People v Crippen, 242 Mich. App. 278 (2000)

Force or coercion under the CSC statute may occur where the suspect is disguised. In this case the suspect wore a turban around his head. The victim thought the subject was her fiancé.

Add to CSC second degree on page 4-16

CSC second now includes actions between inmates and correction's

officers.

P.A. 227 of 2000 (effective 10-1-2000)

CSC 2nd includes the following:

- The victim is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the victim is under the jurisdiction of the department of corrections.

- The victim is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility, who knows that the victim is under the jurisdiction of the department of corrections.

- The victim is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

- The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

Position of authority includes spiritual therapist

The defendant in this case was a Reiki therapist, which is an ancient healing art that involves using various hand positions to activate internal healing. He had been working with the mother of a fourteen-year-old boy when the boy requested to also attend some of the sessions. The defendant agreed and requested the mother to work privately with her son in the upstairs bedroom. The mother agreed. During these sessions the defendant requested the boy to touch the defendant's testicles. The boy did and the defendant talked about sexual energy.

The defendant was charged with CSC 2nd under the theory that he was in a position of authority over the victim. The Court of Appeals upheld the charges. "We find that the defendant exploited and abused his position of authority to compel an extremely vulnerable youth to engage in sexual

contact. This clearly constitutes coercion for purposes of this section of the CSC II statute." People v Knapp, C/A No. 210837 (January 23, 2001)

Add to CSC on page 4-18

Sex Offender Registration

Convictions under the act

- Accosting Minor for Immoral Purposes
- Child Sexually Abusive Material
- Disorderly Person – Obscene Conduct(3rd conviction)
- Indecent Exposure(3rd conviction)
- Child Kidnapping
- Pandering
- CSC 1st, 2nd, 3rd, 4th
- Assault with the intent to commit CSC
- Sexually Delinquent Person
- Victim under 18 years of age
    - Sodomy
    - Gross Indecencies
    - Kidnapping
    - Soliciting to Commit Prostitution

Address verification

- Beginning January 1, 2000.
- Sex Offenders must verify their address.
    - Misdemeanor offenders – January 1-15 annually.
    - Felons – First 15 days of January, April, July, October.

- A valid ops or ID card may be used. Officers may request to see additional ID.
- DD-4 shall be completed and signed. Failure to sign is a misdemeanor.
- Signed copy should be given to offender.
- At the end of each period LEIN, shall make a list of those individuals who have not verified their address. An appearance ticket may be issued. If it is determined that the subject has moved, felony charges may be sought.

Registration Duration

- First offense – 25 years or 10 years after being released from prison, whichever is longer. Life for second offense.

- Lifetime registration for the following 1st offenders:

  - CSC 1st
  - CSC 2nd (victim under 13)
  - Kidnapping (victim under 18)
  - Child kidnapping
  - Child sexually abuse activity
  - An attempt of any of the above.

Students and temporary workers

- Required to register if:

  - 14 or more consecutive days
  - 30 or more days in a calendar year

Penalties

- Failure to sign DD-4 and DD-4A = 93 days
- Failure to verify address = 90 day misdemeanor
- Failure to report change of address, or
- Failure to register, or use false information =

  - Felony
  - 1st = 4 yrs, 2nd = 7 yrs, 3rd = 10 yrs

Where can prosecution be sought?

- Individuals last registered address.
- The individual's actual address.
- Where arrest was made.

Moving out-of–state

- Within 10 days of moving out-of-state, the offender must report their new address to their **local state police post**. DD-4 must be completed and copy faxed to Investigative Resource Unit.

Add to Homicide on page 4-18

Intervening Causes

📖 Defendant could be convicted of homicide even though the actual cause of the victim's death was the removal from life support. The court held, "There was no separate intervening cause, only the

unsuccessful efforts of the medical community to overcome the harm inflicted by the defendant, and the acceptance by the victim's family of the reality of the fatal injuries." People v Bowles, 461 Mich. 555 (2000)

Add to Felony Murder on page 4-18

- 🕮 The defendant in this case shot and killed a man who was attempting to stop a purse snatching. The court held that assault with the intent to rob while unarmed falls under the offense of robbery under the felony murder statute. People v Ross, 242 Mich. App. 241 (2000)

- 🕮 Felony murder includes home invasion in the first degree. People v McCrady, C/A No. 215180 (December 19, 2000)

Add to killing a police officer on page 4-19

- 🕮 First degree murder for killing a police officer is upheld as constitutional. People v Clark, C/A No. 217307 (December 1, 2000)

Add to involuntary manslaughter on page 4-19

- 🕮 A person can be convicted of OUIL causing death and involuntary manslaughter without violating double jeopardy protections. People v Kulpinski, 243 Mich. App. 8 (2000)

- 🕮 MCL 750.49(10) states:

  "If an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting attacks a person without provocation and causes the death of that person, the owner of the animal is guilty of a felony and shall be punished by imprisonment for a maximum term of not more than 15 years." Defendant's conviction under this charge was upheld where he taught his two pit bulls to fight. The animals escaped and killed a woman. People v Beam, C/A No. 219496 (December 26, 2000)

Add to stalking on 4-24

Stalking statute is upheld as constitutional

- 🕮 This case involved a couple who had been dating. The woman attempted to break up the relationship when her boyfriend became physically abusive. Incidents included throwing her around and causing her to have a nervous breakdown. After telling him the relationship was over, he showed up in her bedroom while she was

asleep trying to change her mind. She tried to call the police and he stopped her. He then threw her across the room and left. Following the break up he started calling her fifteen times a day at home and work. He also threatened her with a baseball bat and a knife.

He was convicted of aggravated stalking in the state courts. A Federal District Court reviewed his case on a habeas and held that the stalking which occurred was unconstitutional because it was overbroad in that the statute could also infringe upon protected activity. The Sixth Circuit Court of Appeals reversed. "Any effect on protected speech is marginal when weighed against the plainly legitimate sweep of the statute, and certainly does not warrant facial invalidation of the statue." Staley v Jones, 2001 FED App. 0037P (6th Cir.)

Stalking via the Internet

P.A. 475 of 2000 - MCL 750.411s (April 1, 2001)

A person shall not post a message on the Internet or other electronic medium of communication without the victim's consent if all of the following apply:

- The person knows or has reason to know that the posting could cause 2 or more separate noncontinuous acts of unconsented contact with the victim.

- Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- Conduct arising from the posting would cause as reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed or molested.

- Conduct arising from the posting actually causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

2 year felony

5 year felony if any of the following apply:

- Posting the message violates a court order. If the order is a retraining order, the person must have received notice.

- The message results in a credible threat communicated to the victim or member of the victim's family or another individual living in the same household as the victim.

- The person has been previously convicted of stalking or 750.145d (computer crimes).

- The victim is less than 18 years of age and the person is 5 or more years older.

Prosecution may be sought if one of the following apply:

- The person posts the message while in this state.

- Conduct arising from posting the message occurs in this state.

- The victim is present in this state at the time the offense or any element of the offense occurs.

- The person posting the message knows that the victim resides in this state.

Add to Unarmed Robbery on page 4-24

📖 Defendant could not be convicted of unarmed robbery where he fought with security after stealing items from a store. Defendant would have been guilty of unarmed robbery if he had succeeded in his escape. People v Randolph, 242 Mich. App. 417 (2000)

Add to Identity Fraud on page 4-27

P.A. 386 of 2000 – MCL 750.285 (April 1, 2001)

A person shall not obtain or attempt to obtain personal identity information of another person with the intent to unlawfully use that information for any of the following purposes without that person's authorization:

- To obtain financial credit.
- To purchase or otherwise obtain or lease any real or personal property.
- To obtain employment.
- To obtain access to medical records or information contained in medical records.
- To commit any illegal act.
- 5 year felony/$50,000.

The person can also be charged with the underlying crime. This section does not apply to discovery in a civil action.

Personal identification information includes:

- Social security number.
- A driver's license number or personal identification number.
- Employment information
- Information regarding any financial account held by another person including, but not limited to the following:

    - A savings or checking account number.
    - A financial transaction device.
    - A stock or other security certificate.
    - A personal information number for an account described above.

Replace section on Computer Crimes on page 4-27

PA 185 of 2000 - MCL 750.145d (September 18, 2000)

- A person shall not use the internet, computer, computer network, computer system, or computer program to communicate with another person for the purpose of doing any of the following:

    - CSC, kidnapping, soliciting of children for immoral purposes, recruiting a minor to commit a felony, child kidnapping, child pornography or distributing obscene material where the victim or intended victim is a minor **or is believed by the suspect to be a minor**.
    - Stalking.
    - The following explosive violations:
        - Death by explosives.
        - Selling explosives to minors.
        - False bomb threats.

- Jurisdiction may occur where communication originated from or where it terminated.

- A violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

- Subject can also be charged for the underlying crime.

- Minor = less than 18.

- A person who violates this section is guilty as follows:

  If underlying crime is punishable by the following, the penalty is listed

  - A maximum term of 1 year = 1 year misdemeanor
  - If punishable by 1 but less than 2 years = 2 year felony
  - If punishable by 2 but less than 4 years = 4 year felony
  - If punishable by 4 but less than 10 years = 7 year felony
  - If punishable by 10 but less than 15 years = 15 year felony
  - If punishable by 15 years to life = 20 year felony

CRIMES AGAINST PROPERTY

Add to arson on page 5-1

📖 People v Nowack, 462 Mich. 392 (2000)

"Proof of common-law arson does not require a specific intent to cause injury to a particular person or damage to particular property. To establish that a defendant acted willfully or maliciously and voluntarily, the prosecution must prove one of the following: 1) that the defendant intended to do the physical act constituting the actus reus of arson, i.e., starting a fire or doing an act that results in the starting of a fire (intentional arson); or 2) that the defendant intentionally committed an act that created a very high risk of burning a dwelling house, and that, while committing the act, the defendant knew of the risk and disregarded it (wanton arson)."

Add to auto theft on page 5-5

PA 185 of 1999 - MCL 750.535a (April 1, 2000)

- Increased penalties from 5-year felony to 10-year felony if knowingly owns, operates, or conducts a chop shop or aids and abets in owning operating, or conducting a chop shop.

Add to auto theft on page 5-5

Motorcycles can be held for no longer than 30 days

PA 408 of 2000 MCL 257.230a (March 28, 2001)

A police officer who finds a motorcycle without a visible VIN number may seize the motorcycle and do all of the following:

- Secure and transport the motorcycle to a place that will protect it from damage.
- Determine if the motorcycle is stolen.
- Utilize forensic laboratory specialized, if needed.
- Unless otherwise required by law, return the motorcycle within 30 calendar days. An agency holding the bike longer than 30 days is subject to liability.

Add to Embezzlement on page 5-14

📖 People v Collins, 239 Mich. App. 125 (1999)

Embezzlement by a joint owner includes the following elements:

- Money belonged to defendant and co-owner.
- Defendant must be in a position of trust.
  The money must have come into defendant's possession due to the position of trust.
- Defendant dishonestly disposed of or converted the property to his own use.
- Without the co-owner's consent.
- Defendant intended to defraud the co-owner.

MISCELLANEOUS CRIMES

Add to Controlled Substance Violations on page 6-1

New law prohibits the sale of Nitrous Oxide as a recreational drug.

P.A. 299 of 2000 – MCL 752.273 & add section 2a (January 1, 2001)

A person shall not sell or otherwise distribute to another person any device that contains any quantity of nitrous oxide (also known as laughing gas) for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system. Law targets novelty "head" shops, making it more difficult for persons to obtain the gas for recreational use.

Exemptions: Persons who sell or distribute catering supplies, persons who sell compressed gases for industrial or medical use, pharmacists or health

care professionals and persons licensed under the Food Processing Act of 1977.

- First Violation = 93 day misdemeanor
- Second Violation = one year misdemeanor
- Two or more prior convictions = 4 year felony

Increased penalties for Methamphetamine and other control substance violations.

P.A. 314 of 2000 - MCL 333.7401c (January 1, 2001)

- Possession of methamphetamine increases from a 2 year to a 10 year felony.
- Manufacture, delivery, or possession with intent to deliver increases from a 7 year to a 20 year felony.
- The penalty for "use" of methamphetamine remains at a one year misdemeanor but the fine increases from $1,000 to $2,000.
- Establishes a 10 year felony for a person to own, possess, or use a building, vehicle, structure, or place that he has knowledge or reason to know is being used as a location to manufacture a controlled substance.
- Establishes a 10 year felony for a person to own or possess chemical or laboratory equipment that he knows or has reason to know is to be used for the purpose of manufacturing a controlled substance.
- Establishes a 10 year felony for a person to provide any chemical or laboratory equipment to another person knowing or having reason to know the equipment is going to be issued for manufacturing a controlled substance.
- Establishes a 20 year felony for the unlawful disposing of such hazardous waste created in the manufacture of a controlled substance; judge may also order person convicted to pay environmental response activity costs.
- Establishes a 20 year felony if these violations are in the presence of a minor or occur within 500 ft. of a residence, business, school, or church.
- Establishes a 25 year felony if the violation involves a firearm or any device designed or intended to be used to injure another person.
- Cocaine and marijuana are exempt from these penalties.

Gamma-Butyrolactone (GBL) is illegal for human consumption.

P.A. 302 of 2000 - MCL 333.7401a, 7410, 7410a, & 7521 (January 1, 2001)

GBL is a precursor to and can be readily converted to gamma hydroxybutyrate (GHB), also known as the "date rape drug" when taken orally. The manufacture, delivery or possession of GBL for human consumption is now

prohibited. GBL can be possessed for use in a commercial application such as industrial solvent and floor stripper.

- Penalty for manufacture, delivery or intent to manufacture or deliver = 7 year felony
- Possession of GBL = 2 year felony
- GBL used to commit CSC = 20 year felony

Add to page 6-7

Drug Free School Zones

PA 188 of 1999 - MCL 333.7410

- Changed requirement that delivery of drugs had to be to a "minor who is a student." The new wording is deliver or possession with intent to deliver to "another person". The violation still has to occur within 1,000 feet of school and the suspect must be 18 years old or older for this charge.

Add to CCW on page 6-13

CCW does not apply to double edged knives made from conchoidal fracturing

P.A. 343 of 2000 MCL 750.222a (December 27, 2000)

Double-edged, nonfolding stabbing instrument does not include a knife, tool, implement, arrowhead, or artifact manufactured from stone by means of conchoidal fracturing. This section does not apply to an item being transported in a vehicle, unless the item is in a container and inaccessible to the driver.

Knives made from conchoidal fracturing are made from breaking of stone. Examples include stone knives and arrowheads.

Add to CCW in a vehicle on page 6-13

📖 CCW includes carrying a pistol on a motorcycle. People v Nimeth, 236 Mich. App. 616 (1999)

Add to CCW on page 6-14

Out-of-state residents

📖 People v Miller, 238 Mich. App. 168 (1999)

The defendant in this case was an Ohio resident and was arrested for CCW by Ann Arbor PD. He argued that under Ohio law he was allowed to carry a pistol without a permit and thus was authorized to carry a pistol in Michigan under 750.231a without a permit.

"The exception to criminal liability on which the defendant relies, MCL 750.231a(1)(a); …says that the concealed weapons provisions do not apply 'to a person holding a valid license to carry a pistol concealed upon his or her person issued by another state …'. By its unambiguous terms, this statute requires both that a valid license be held by a person seeking its protection and that the license was issued by a state. Neither of these conditions is satisfied here."

Possession of a pistol by a security guard

📖 People v Biller, 239 Mich. App. 590 (2000)

Officers stopped a security guard and located a pistol lying under his front seat. He was charged and convicted of CCW. He argued that since the company he worked for was licensed under the Private Security Guard Act, he should have been charged with a misdemeanor instead of a felony. The Court of Appeals disagreed.

"We hold that the trial court did not err in refusing to reduce defendant's felony charge to a misdemeanor under the PSGA because the legislature intended private security guards to remain governed by the laws of Michigan, and the PSGA does not create a new or separate offense for carrying a concealed weapon to be applied to persons subject to the act."

Add to Discharge of a Firearm in an Occupied Dwelling on page 6-20

📖 People v Henry, 239 Mich. App. 140 (1999)

During an argument with his wife, defendant fired a handgun into the bedroom wall. He was charged under MCL 750.234b that prohibits firing a firearm in an occupied dwelling. He argued that the charge was a specific intent crime and since he was intoxicated at the time he did not have the necessary intent. The statute only requires proof that the defendant intentionally discharged the firearm, which is a general intent crime and voluntary intoxication is not a defense.

Add to page 6-23

Trigger Locks

P.A. 265 of 2000 – MCL 28.421 (June 29, 2000)

A federally licensed firearms dealer shall not sell a firearm without one of the following:

- A trigger lock or other device designed to disable the firearm and prevent discharge of the firearm.

- A commercially available gun case or storage to prevent unauthorized access to the firearm.

This section does not apply to

A police officer

A persons who presents to the dealer one of the following:

- A trigger lock or other device designed to prevent the discharge of the firearm along with a copy of the purchase receipt.

- A gun or storage container that can be secured to prevent unauthorized access to the firearm along with a copy of the purchase receipt.

The sale of an antique firearm.

Penalties

- 1st offense = 93 day misdemeanor
- 2nd offense = 1 year misdemeanor
- 3rd offense = 2 year felony

Add to end of page 6-28

Abandoned Vehicles on trunklines may be towed within 24 hours.

P.A. 306 of 2000 - MCL 257.252a (October 16, 2000)

Abandoned vehicles on a state trunkline highway ("I" roads, "M" Roads, and "US" Roads) may be towed from the scene if the vehicle has been inspected and an abandoned vehicle sticker has been affixed, and the vehicle was not removed within 24 hours.

Add to end of page 6-28

School officials can request vehicle information, via LEIN, from a police agency.

P.A. 320 of 2000 - MCL 28.214 (October 25, 2000).

Authorizes public or private school superintendents, principals, or assistant principals to obtain vehicle information from LEIN of a vehicle located within 1,000 feet of school property. The LEIN policy council is still developing the proper procedure to handle these types of requests.

Add to page 6-28 under peddler violations

Restrictions on items to be sold at flea markets and swap meets.

P.A. 332 of 2000. - MCL 750.411r (February 1, 2001)

An unused property merchant may not sell one or more of the following:

- Food manufactured, packaged, and labeled specifically for sale or consumption by a child less than 2 years of age.
- A non prescription drug that is past its expiration date.
- A medical device.

This section does not apply a merchant who has written authorization from the manufacturer of the product. Use of a false or forged authorization is a 93 day misdemeanor.

An unused property merchant shall retain for 2 years a purchase receipt for each new and unused property the merchant acquires. The following is a 93 day misdemeanor.

- Falsify a receipt.
- Refuse or fail to make a receipt available for inspection by a law enforcement officer within a reasonable time after the request.
- Destroy the receipt before the end of the two year period.

Add to liquor violations on page 6-27

Consuming Alcoholic Liquor on School Property

P.A.274 of 1999 - MCL 436.904

A person shall not consume alcoholic liquor or possess with the intent to consume alcoholic liquor on school property.

- 1st = 93 day misd/250.00
- 2nd = 93 day misd/$500.00
- 3rd or more = 1 year misd/$1,000

Section does not apply to a recognized religious event or if allowed by the superintendent.

This section does not prohibit additional charges arising out of the same transaction.

School = public school kindergarten through 12th grade.

School property = Buildings, playing fields, vehicles, or other property used for functions and events sponsored by a school. Does not include a building primarily used for adult ed. or college extension courses.

Add to the end of page 6-28

Riding in the back of a pickup

PA 434 of 2000 - MCL 257.682b (March 28, 2001)

- An operator shall not permit a person less than 18 years of age to ride in the open bed of a pickup truck at a speed greater than 15 mph. Civil infraction.

- Exceptions:

  - A parade.
  - A military vehicle.
  - An authorized emergency vehicle.
  - A farm, construction or similar business during course of work activities.
  - A search and rescue team to and from an emergency.

Add to false police reports on page 7-10

PA 370 of 2000 – MCL 750.411a (April 1, 2001)

- False report of a misdemeanor = 93 days/$100.00.
- False report of a felony = 4 year felony/$2,000.
- Either knowingly make a false report of explosive under 750.327 and 750.328 that is communicated to another person or threaten to do so is guilty of the following:

- 1st offense = 4 year felony.
- 2nd or subsequent = 10 year felony.
- Person is responsible for the costs to the state or local unit of government responding to the false bomb report.

- If the suspect is a juvenile, all the following apply:

  If the juvenile cannot pay and notice is given to the parents, the parents may be held responsible for the costs. The court must take in to account the ability of the family to pay and may suspend payment if it would cause undue hardship.

Add to escape on page 7-12

A person cannot be convicted of absconding on a felony bond where the underlying charge was a two-year misdemeanor offense for resisting and obstructing.

📖 People v Williams, C/A No. 224612 (November 17, 2000)

Defendant in this case pled guilty to R and O which is a two-year misdemeanor. He later absconded on his bond and was charged under MCL 750.199a, which prohibits absconding on a felony bond. The court of appeals reversed his conviction because R and O is a misdemeanor and not a felony.

Add to pandering on page 7-15

📖 People v Morey, 461 Mich. 325 (1999)

Pandering requires that the defendant must have enticed or induced a woman "to become a prostitute." If the female is already a prostitute, the pandering statute is not applicable.

Add to page 7-17

📖 Common law obstruction of justice applies to fabricating false, inaccurate or misleading evidence material to a grand jury investigation. People v Jenkins, C/A No. 213311 (December 19, 2000)

Add to section after perjury on page 7-17

Jury Tampering

PA 450 of 2000 MCL 750.120a (March 28, 2001)

Willfully attempting to influence the decision of a juror other than in open court = 1 year misdemeanor.

- **Use of intimidation**
  - Willfully attempt to influence the decision of juror through intimidation = 4 year felony
  - If committed in a criminal case where underlying crime is punishable by more than 10 years = 10 year felony.
  - If intimidation involves committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage = 15 year felony.

- **Retaliation**
  - Retaliation against a juror for performing his or her duties = 10 year felony. Retaliate means to commit a crime against the person or threaten to injure or cause property damage.
  - Person can also be charged with underlying crime.

Inhibiting an investigation

PA 451 of 2000 - MCL 750.483a (March 28, 2001)

A person shall not do any of the following;

- Withhold information ordered by a court.
- Prevent a person through the unlawful use of force from reporting a crime.
- Retaliate against a person for reporting a crime.

Retaliate means

- Commit or attempt to commit a crime against any person.
- Threaten to kill, injure or cause property damage.

Penalties

- 1 year misdemeanor
- 10 year felony if act involves a crime, or a threat to kill, injure, or cause property damage.

A person shall not do any of the following:

- Give or offer to give, or promise anything of value to any person to influence the person's statement or evidence presented to a police officer conducting a lawful investigation.

- Threaten or intimidate any person to influence that person's statement or the presentation of evidence to a police officer conducting a lawful investigation.

Penalties

- 1 year misdemeanor.
- 10 year felony if act involves committing a crime or attempting to commit a crime or a threat to injure, kill or damage property.

A person shall not do any of the following:

- Knowingly remove, alter, conceal, destroy, or otherwise tamper with evidence to offer in official proceedings.
- Offer evidence in official proceedings that he recklessly disregards as false.

Penalties

- 4 year felony.
- 10 year felony if act is committed in criminal case for which the maximum term of imprisonment is more than 10 years.

It is a defense if the conduct was lawful and the defendant's intention was to have the person speak truthfully.

Person can also be charged with any other crime that arises out of the same transaction.

Witness tampering

PA 452 of 2000 MCL 750.122 (March 28, 2001)

A person shall not give or offer to give or promise anything of value for any of the following purposes:

- To discourage a person from being a witness at official proceedings.

- To influence a person's testimony at official proceedings

- To encourage a person to avoid legal process, withhold testimony, or to testify falsely in an official proceeding.

- This section does not apply to reasonable witness fees.

A person shall not do any of the following by threat or intimidation:

- Discourage a person from being a witness at an official proceeding.

- Influence a person's testimony at an official proceeding.

- Encourage a person to avoid legal process, withhold testimony, or to testify falsely in an official proceeding.

- A person shall not willfully impede, interfere with, prevent, or obstruct any witness to testify at an official proceeding. Includes attempts.

Penalties:

- 4 year felony.
- 10 year felony if act involves a criminal case where underlying crime is punishable by more that 10 years.
- 15 year felony if act involves a threat to kill or injure another person or cause property damage.

A person who retaliates against another person for having been a witness is guilty of a 20 year felony. Retaliate means commit a crime against any person or threaten to injure or kill another person or cause property damage.

Person can also be charged with other crimes arising out of the same transaction.

Increased penalties for jury bribery:

P.A. 453 of 2000 MCL 750.119 (March 28, 2001)

- 4 year felony
- 10 year felony if act involves a criminal case where the underlying crime is punishable by more than 10 years.

LAWS OF ARREST

Add to fresh pursuit section on page 9-9

Police officers of bordering states have increased authority.

P.A. 311 of 2000 – MCL 764.2b (October 17, 2000)

A law enforcement officer of an adjacent state (Indiana, Ohio, Minnesota, and Wisconsin) has the same authority and immunity as a law enforcement officer of Michigan if he or she is on-duty, is authorized to arrest in their home state, and notifies a law enforcement agency of this state that he or she is in Michigan for one of the following reasons:

- The officer is engaged in pursuing, arresting, or attempting to arrest an individual for a violation of a law in an adjacent state.
- The officer is in Michigan at the request of a Michigan officer.
- The officer is working in conjunction with a Michigan officer.
- The officer is responding to an emergency.

EVIDENCE

Add to section on attorney/client privilege on Page 8-16

📖 While in a courtroom, the defendant in this case discussed issues with his attorney. The bailiff was also in the courtroom and standing six feet away when the statements were made. The bailiff was subsequently called in to to testify about what he overheard in the conversation. The defendant argued that the conversation was protected under the attorney/client privilege. The Court of Appeals disagreed.

"When defendant spoke to his attorney the uniformed bailiff was in his usual position in the courtroom and his presence was obvious to all persons in the room. Situated in this public location during public proceedings, and under the scrutiny of the bailiff, defendant chose to communicate with counsel by speaking to the attorney in a manner that could be overheard by a third person rather than covering his mouth and quietly whispering or communicating in writing." Under these circumstances, the conversations were not confidential and thus not protected. People v Compeau, C/A No. 217193 (February 9, 2001)

Add to physician/patient privilege on page 8-17

Obtaining blood results from the hospital may violate doctor-patient privilege.

📖 The defendant was charged with involuntary manslaughter in the death of her three children. The deaths occurred in a house fire, which the prosecutor alleged was started when the defendant was intoxicated. To prove her negligence, the prosecutor attempted to subpoena the woman's hospital records as to a blood alcohol test administered to the defendant on the morning of the fire. The Court of Appeals denied the subpoena on the basis of the physician-patient privilege, which protects "any information that is acquired by a physician in the course of treating a patient, as long as that information is necessary in order to treat the patient." No other exception was applicable. People v Childs, C/A No. 224698 (November 21, 2000)

Add to section on polygraph on page 8-17

Mention of taking a polygraph may require a mistrial.

📖 During a trial for murder, the prosecutor attempted to rehabilitate a witness after defense questioning by inquiring why the jury should believe her testimony. The following exchange occurred;

Q. Okay. So, then, why should we believe you?

A. That's up to you. I took a lie detector test.

The jury found the suspect guilty of first-degree murder. The Court of Appeals reversed the conviction based on the witness statement about the lie detector. In analyzing its decision, the court reviewed five factors:

"(1) Whether defendant objected and/or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster a witness's credibility; and (5) whether the results of the test were admitted rather than merely the fact that a test had been conducted."

"Each of these factors weighs in favor of defendant. Based on this analysis, we believe that a sufficient possibility existed that the jury may have resolved the credibility issue by reference to the polygraph testimony. Where the reference to the polygraph test was brought out by the prosecutor, not as a matter of defense strategy, and where the key prosecution witness, who was involved in the crime and was the

crucial witness against defendant, gave a responsive answer to the prosecutor's question that was posed with the intent of bolstering the witness's credibility and was later repeated before the jury during deliberations, we believe that prejudice to defendant occurred." People v Nash, C/A No. 208799 (December 26, 2000)

Add to section on other crimes, wrongs, or acts on page 8-15

Evidence of prior bad acts

📖 The defendant was charged with CSC against his stepdaughter. At his trial the judge allowed another stepdaughter to testify about similar acts that had occurred between herself and the defendant.
The Michigan Supreme Court upheld the admissibility of the evidence. "In this case, we conclude that the trial court did not abuse its discretion in determining that defendant's alleged assault of the complainant and alleged abuse of his stepdaughter shared sufficient common features to infer a plan, scheme, or system to do the acts. The charged and uncharged acts contained common features beyond mere commission of acts of sexual abuse. Defendant and the alleged victims had a father-daughter relationship. The victims were of similar age at the time of the abuse. Defendant allegedly played on his daughters' fear of breaking up the family to silence them. One could infer from these common features that defendant had a system that involved taking advantage of the parent-child relationship, particularly his control over his daughters, to perpetrate abuse."

The Court also allowed evidence of the order. "We agree with the prosecution that the Court of Appeals erred in concluding that the trial court abused its discretion in admitting evidence of the existence of the agency order. In this case, the prosecution did not offer the evidence for the purpose of demonstrating defendant's bad character by means of an inference from his having violated the order. The evidence was instead clearly relevant because it explained the complainant's testimony regarding the threat used by defendant in an effort to secure her silence. The complainant testified that defendant told her that if she reported the incident to her mother, her mother would 'be really upset with [her] for breaking her family up again....' Evidence regarding the existence of an agency order that effectively separated the family filled a conceptual void regarding the events by providing information that the jury needed to understand defendant's reference to breaking up the family again." People v Sabin, 463 Mich. 43 (2000)

📖 During a trial for CSC 2nd between a teacher and a student, the prosecutor wanted to enter into evidence that the defendant engaged in sexual penetration of a student in 1976. The Court of Appeals upheld the evidence as it demonstrated a common plan in approaching and molesting his victims. "Defendant's prior victim and complainant were both pubescent boys at the time of the incidents, defendant was acting as a teacher when he approached the victims, defendant ingratiated himself with the families of both victims, he isolated both boys to initiate sexual contact and both assaults involved masturbation and discussions of masturbation. Thus, the evidence at issue was relevant to show defendant's common scheme or plan." The similar acts were also used to show that the contact was for sexual purposes and not just part of the therapy. People v Knapp, C/A No. 210837 (January 23, 2001)

ADMISSIONS AND CONFESSIONS

Add to pages 9-10 and 10-16

Failure to have a person arraigned within 48 hours of arrest will be a factor under the totality of the circumstance test in admitting a confession.

📖 The defendant in this case was held for 81 hours after her arrest, without being brought before a magistrate. After the 81 hours, she asked to speak to the detective and confessed. The delay was due to difficulty in getting the paperwork done and a change in the detective assignments due to vacations. On appeal, she argued that the confession should be suppressed under the 48-hour rule.

The United States Supreme Court in the case of Riverside v McLaughlin, 111 S.Ct. 1661 (1991) held that a person arrested without a warrant must be brought before a magistrate with 48 hours of the arrest. They held that a longer time frame would be presumptively unreasonable under the Fourth Amendment and the evidence obtained beyond the allowed time could result in suppression. The Michigan courts recognize that confessions will be admissible if under the totality of the circumstances it is shown that the confession was voluntarily given. People v Cipriano, 431 Mich 315 (1988).

"We conclude that the trial court erred in suppressing Manning's inculpatory statement solely on the basis of the delay. The trial court should have instead considered whether the statement was voluntary based on the totality of the circumstances. The record indicates that

Manning, who was nineteen years old at the time of her arrest, received Miranda warnings prior to giving her inculpatory statement. Manning testified that she both read and understood her rights. She further testified that the police did not deprive her of food, water, or sleep. Detective Darian Williams testified that Manning did not appear to be under the influence of any drug or other intoxicant, and that she did not appear to need medical attention. Finally, we note that Manning, rather than the police, initiated the discussion that resulted in her giving the inculpatory statement." People v Manning, C/A No. 224898 (December 15, 2000)

Add to Bender on page 10-15

Officers must notify a defendant that an attorney has been retained for the admissibility of a confession.

📖 The defendant's aunt called the county jail where the defendant was being held and informed whoever answered that she had retained an attorney for his defense. Ten minutes after the call, detectives removed the defendant from his cell and interrogated him without informing him about the retention of the attorney. The Court of Appeals looked at whether the statement should be suppressed under the Bender rule, which invalidates confessions obtained where the police fail to inform a suspect that an attorney had been retained during an interrogation.

"We see no reason why we should not apply Bender to this case. As we have already explained, we believe four Justices found that telephone contact was sufficient to invoke the protection of Bender. Bender, also held that the per se rule applied when a family member, not the retained attorney, made the contact with the police station. In light of these facts, we see nothing to distinguish Bender, from the situation presented in this case. Under Bender after receiving the aunt's phone call, the police should have informed defendant that counsel had been retained for him and was on the way to the police station." People v Leversee, C/A No. 220571 (November 21, 2000)

Add to section on waiver on page 10-14

For a Miranda waiver, the courts will evaluate two prongs. First, was the waiver voluntarily made, and second, was it knowingly and intelligently waived.

📖 The defendant suffered from a delusion that the police work for God and that if he confessed to killing his mother, he would be set free. In

deciding if his confession was properly obtained, the Michigan Supreme Court applied a two-prong test as to the waiver of Miranda rights. The first prong is whether or not the waiver was voluntarily made. The next prong is whether the waiver was knowingly and intelligently made.

A knowing and intelligent waiver of Miranda rights does not equate with a wise or lawyer-inspired decision to waive those rights. "Rather, the only inquiry with regard to a 'knowing and intelligent' waiver of Miranda rights is whether the defendant understood 'that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him.'" People v Daoud, 462 Mich. 621 (2000)

SUSPECT IDENTIFICATION

Add to section on Corporeal lineups on page 11-1

Right to a line up and the Independent Basis Test

📖 Prior to a trial for assault, defendant's attorney requested a line-up. The trial court denied the request and the Court of Appeals agreed.

"A right to a line-up arises when eyewitness identification has been shown to be a material issue and when there is a reasonable likelihood of mistaken identification that a lineup would tend to resolve. In the present case, eyewitness identification was a material issue, however, a lineup would not have resolved any "mistaken identification." People v McAllister, 241 Mich. App. 466 (2000)

Add to section on independent basis test on page 11-6

📖 The victim in this case was walking to her car when a suspect grabbed her and held a knife to her, demanding her purse. An off-duty officer witnessed the altercation and confronted the suspect. The suspect threw his knife to the ground and ran from the scene. Three months later, the victim saw the suspect again and called police. He was arrested at the scene. The defendant argued that there was a mistaken identity and that he did not commit the crime. The off-duty officer said that it looked like the guy. In looking at the facts, the Court of Appeals upheld the conviction.

The court first upheld the police officer's identification. "While a significant amount of time had passed since the crime and while

Settles had a relatively short time to observe defendant, he is a trained police officer whose initial description was accurate and who confronted defendant from 12 to 20 feet away, ordering defendant to freeze."

The court also upheld the victim's identification. "Based on complainant's face to face opportunity to observe defendant commit the crime and her subsequent identification of him in public on three additional occasions, one of which led to his arrest, we conclude that there was an independent basis for complainant's identification of defendant, notwithstanding the unreliability of eyewitness testimony in general. Any discrepancy between complainant's initial description and defendant's actual appearance goes to the weight of such evidence, not to its admissibility." People v Davis, 241 Mich. App. 697 (2000)

Add to page 11-2 on Fairness and Suggestibility

Use of audiotape to identify suspect.

📖 The victim in this case was sexually assaulted as she walked from her car to her home. She called the police immediately after the attack and told them that she recalled he was wearing a ski mask and a blue one-piece outfit, but that she also had listened carefully to his voice. A tracking dog was used and located the defendant two houses from where the victim lived. The police contacted the suspect who voluntarily agreed to be interviewed. The interview was taped without the defendant's knowledge. Later, the interview was played for the victim. She was told that the suspect's voice was present on the tape but was not told which voice it was. She identified the voice as the assailant but she also admitted she could discern whom the officers were and whom the suspect was by the conversations that occurred.

The Court of Appeals held that neither the Sixth nor Fifth Amendment rights had attached to the identification procedures. They compared the procedure that occurred to a photograph display where the suspect is not in custody. The court, however, did suppress the evidence because the playing of the tape was impermissibly suggestive. "Only three voices were present on the tape played to the victim. The two voices asking questions were those of the interrogating officers and the third voice answering the questions was that of the defendant. No other voices were played for comparison. Further, prior to playing the tape, the police informed the victim that the primary suspect's voice was on the tape

and that two of the voices were police officers. Although the officers did not state which voice belonged to the defendant, the victim admitted that she could easily determine that the officers were the two individuals asking questions and that the person responding was the defendant." The Court upheld the lower courts holding that dismissed the case without prejudice. People v Williams, C/A No. 221876 (February 2, 2001)

JUVENILES

Add to juvenile law on page 12-1

Parents responsibility for juvenile actions.

📖 People v Schumacher, C/A 206560 (April 4, 2000)

A juvenile offender was convicted of unarmed robbery and sentenced to a juvenile facility. The court ordered his parents to pay the expenses of the confinement. When the subject turned eighteen, the parents questioned whether they were still responsible for the costs. The Court of Appeals held that since the act occurred when he was a juvenile, the parents remain responsible for the costs.

DOMESTIC VIOLENCE LAWS

Add to domestic violence laws on page 15-4

Pulling telephone cord from the wall may fall under MCL 750.540

📖 The defendant could be charged under MCL 750.540 when he ripped the telephone cord out of the wall, rendering the telephone inoperable and preventing the victim from calling the police. MCL 750.540 states:

"Any person who shall wilfully and maliciously cut, break, tap or make any connection with, or read, or copy, by the use of telegraph or telephone instruments, or otherwise, in any unauthorized manner, any message, either social or business, sporting, commercial or other news reports, from any telegraph or telephone line, wire or cable so unlawfully cut or tapped in this state; or make unauthorized use of the same, or who shall wilfully and maliciously prevent, obstruct or delay by any means or contrivance whatsoever the sending, conveyance or delivery, in this state, of any authorized communication, sporting, commercial or other news reports, by or through any telegraph or telephone line, cable or wire under the control of any telegraph or

telephone company doing business in this state … shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years, or by a fine of not more than 1,000 dollars." People v Hotrum, C/A No. 220693 (December 26, 2000)

Add to domestic violence laws on page 15-4

The prosecutor may still bring charges even if the victim refuses to testify.

📖 The victim in this case testified at a preliminary examination that the defendant beat her. At trial she failed to appear. The trial court then dismissed the charges on the grounds that this was private and not a public crime.

The Court of Appeals reversed. "Here, despite the victim's failure to appear on the trial date, the prosecutor arguably had a viable basis to proceed by showing that the victim was an unavailable witness." The prosecutor must decide who to prosecute and not the courts. People v Williams, C/A No. 224892 (January 2, 2001)

LIABILITY

Add to section on Fireman's Rule on page 17-5

Fireman's Rule

📖 Harris-Fields v Syze, 461 Mich. 188 (1999)

Trooper Fields was on a traffic stop on I-94 when he was struck by a vehicle driven by the defendant. The lawsuit was dismissed on the grounds of the fireman's rule. The Michigan Supreme Court reversed. "We agree with the reasoning of these cases, and hold that where the allegedly negligent conduct of the defendant did not result in the officer's presence at the scene of the injury, the fireman's rule does not apply."

SEARCH AND SEIZURE

Add to the Bond case on page 18-3

Review of the Bond Issue. A bag may be manipulated if officers have reasonable basis to believe the baggage contains contraband.

📖 U.S. v Flowal, 2000 FED App. 0409P (6th Cir.)

A drug task force officer received information that a passenger on an airplane matched a drug courier profile. The officers found the passenger's luggage and shook the luggage to see if there was any movement and pushed the sides in. The officers did not find anything suspicious. They then found the passenger and asked for consent to search the bags. The passenger agreed and the officers found 5.2 kilograms of cocaine.

The Sixth Circuit Court of Appeals distinguished what the officers did in this case from what the officer did in the *Bond* case and upheld the search. The Court reasoned that in the *Bond* case, the officers had no suspicion to believe the luggage that was handled contained controlled substances. In this case, the officers received information that the passenger was a drug courier. "In other words, unlike the agent in *Bond*, the officers in this case had a reasonable belief that the luggage contain contraband before ever touching it." Thus, the subsequent search was valid.

Add to section on probable cause on page 18-11

The affidavit for a search warrant must be based on probable cause

📖 The defendant was wanted on a federal indictment for delivery of cocaine. Surveillance on the apartment showed that defendant's vehicle was parked there on two different occasions. He was eventually arrested while he was driving in his car. He lied to the officer about where he lived and gave a different address. A search of the vehicle revealed a key to the apartment and a telephone bill to the defendant mailed to the apartment. A dog was also called and cocaine was located inside the vehicle. Based on this information, a search warrant was obtained for the apartment and additional evidence was seized.

"Under the totality of these circumstances, a reasonably cautious person could conclude that there was a substantial basis for the magistrate's finding of probable cause. Indeed, defendant was arrested as a drug trafficker, cocaine was found in his vehicle, and there was abundant evidence that he resided at or habitually used the Kentwood apartment and had lied about this to the police. Defendant

contends that the affidavit did not support a search of the Kentwood apartment because nothing in the affidavit tied the alleged drug activity to the apartment. However, defendant's denial that he lived at the Kentwood apartment, combined with the reasonable inference that drug traffickers often keep evidence of illicit activity in their homes, provided a sufficient basis for the magistrate's finding of probable cause to search the apartment."

Add to section on leaving copy of affidavit on page 18-19

Failure to leave copy of affidavit is grounds for suppressing the evidence seized.

📖 Defendant's ex-girlfriend and mother of his son reported to police that he was growing marijuana in his house. A search warrant was obtained and executed. Seventy-five plants were discovered. After the warrant was executed, the officers left a copy of the warrant, but on the advice of the prosecutor, did not leave a copy of the affidavit establishing the probable cause.

In the case of People v Moten, 233 Mich 169 (1925), the Michigan Supreme Court suppressed evidence obtained when the facts establishing probable cause was not left at the residence that was searched. This panel agreed with the case of People v Sobczak-Obetts, 238 Mich App 495, which held that since Moten is still good law in Michigan, the evidence discovered must be suppressed and the charges were dismissed. The Michigan Supreme Court has granted review of the Sobczak-Obetts case under 462 Mich 912 (2000). People v Chapin, C/A No. 226419 (December 26, 2000)

Add to plain feel on page 18-26

Pat Downs Searches

📖 During a valid pat down, an officer felt an object that he believed to be a two-by-three inch card of blotter acid in defendant's pocket. He removed the objects and discovered they were Polaroid pictures. The officer then placed the pictures on the roof of the car face down and finished the pat down. The officer then examined the pictures, which depicted a man holding one pound bags of marijuana. Based on the pictures, a search warrant was obtained and fifteen pounds of marijuana was seized.

"We find that this additional inspection of the photographs, unrelated to the initial justification of the warrantless search, and which revealed

evidence of illegal activity that was not immediately apparent upon inspection, constituted an unlawful invasion of defendant's privacy that was unjustified by the exigent circumstances that validated the removal of the photographs from defendant's pocket. People v Custer, 242 Mich. App. 59 (2000)

Add to Terry Stops on page 18-30

The smell of intoxicants by themselves may provide the basis for an investigatory detention.

🕮 During a traffic stop for a broken taillight, the officer detected a strong odor of intoxicants on the driver's breath. Based solely on the odor, the officer requested the driver to exit and perform sobriety tests. The driver was subsequently arrested. The officer testified that the roadside sobriety tests were **based solely on the strong odor of intoxicants on her breath** and not because she was driving or acting in any way that suggested intoxication.

The court upheld the traffic stop and subsequent arrest. "We hold that such an odor may give rise to a reasonable suspicion that the motorist has recently consumed intoxicating liquor, which may have affected his or her ability to operate a motor vehicle. A police officer need not suspect that a motorist blood alcohol content is above or below a certain numerical limit before conducting roadside sobriety tests. Rather, he must merely have a reasonable suspicion that the motorist has consumed intoxicating liquor, which may have affected the motorist's ability to operate a motor vehicle. In order to confirm or dispel such reasonable suspicion, we hold that a police officer may instruct a motorist to perform roadside sobriety tests." People v Rizzo, C/A No. 219360 (November 3, 2000)

Add to Terry Stops on page 18-30

🕮 The City of Indianapolis set up vehicle checkpoints on its roads in an effort to interdict unlawful drugs. The vehicles were systematically stopped and a drug dog would walk around them while an officer would ask the occupants a few questions. The Supreme Court held that this practice violated the Fourth Amendment.

"The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance 'the general interest in crime control. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary

enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime."

"Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example, as the Court of Appeals noted, the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route. The exigencies created by these scenarios are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control." City of Indianapolis v Edmond, 121 S. Ct. 447(2000)

Add to length of detention on page 18-32

A reasonable suspicion must be temporary

Officers stopped a car after receiving reliable information that it contained narcotics. After searching the car and its occupants for drugs, the officers placed the subjects into their patrol car and drove them to the police department. The drugs were later located at the station.

The Sixth Circuit dismissed the charges. "We hold that the district court erred in denying Defendant's motion to suppress the evidence where upon learning Defendant's identity and that she was not armed or carrying contraband (as determined by the patdown search), the officers unreasonably seized Defendant by placing her in the police car and questioning her further; transporting her to the police station; detaining Defendant while at the police station; and questioning her further once there. Although the officers properly relied upon the bulletin from the undercover officers which indicated that Defendant was suspected as being involved in drug trafficking so as to justify the initial stop of the cab, once Defendant identified herself, answered the officer's questions, and consented to the patdown which did not reveal anything suspicious, the officers were required under the Fourth Amendment to allow Defendant to go free. The officer's continued detention of Defendant in the back of the

locked patrol car ripened the investigatory stop into an arrest; and because the officers did not have probable cause to arrest Defendant at that time, the seizure was illegal." U.S. v Butler, 223 F.3d 368 (2000)

Detentions pending the issuance of a search warrant.

📖 Officers assisted a woman in keeping the peace as she removed some belongings from her residence. When she came outside after getting her possessions, she told one officer that her husband had marijuana under the couch. The officers made contact with the husband and requested permission to search the residence, but the husband refused. One officer then left to get a search warrant while the other officer waited with the husband. The husband was told that he could not enter the residence without being accompanied by the officer. A warrant was obtained and executed two hours later. Marijuana was located and the husband was charged with possession of marijuana and drug paraphernalia.

The defendant argued on appeal that denying him access to the residence was an unreasonable seizure and that the evidence should be suppressed. The United States Supreme Court disagreed.

"In light of the following circumstances, considered in combination, the Court concludes that the restriction was reasonable, and hence lawful. First, the police had probable cause to believe that McArthur's home contained evidence of a crime and unlawful drugs. Second, they had good reason to fear that, unless restrained, he would destroy the drugs before they could return with a warrant. Third, they made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy by avoiding a warrantless entry or arrest and preventing McArthur only from entering his home unaccompanied. Fourth, they imposed the restraint for a limited period, which was no longer than reasonably necessary for them, acting with diligence, to obtain the warrant." Illinois v McArthur, U.S. SupCt No. 99-1132 (February 20, 2001)

Add to emergency searches on page 18-35

Inevitable discovery may apply to emergency searches.

📖 Two state troopers located a subject passed out in a vehicle near the scene of a suspicious fire. The man matched a description of a man seen leaving the scene of the fire who seemed disoriented and

injured. An officer entered the vehicle to check on his wellbeing. In the process of checking on him the officers went into his pockets to search for identification and in the process found physical evidence against the subject.

The lower court suppressed the evidence because the emergency exception could not be extended to the search of the defendant's pockets. The Court of Appeals agreed but held that the evidence may have been found anyway and ordered the lower court to consider the admission of the evidence under the inevitable discovery rule. "Because it appears from the record before us that the evidence in defendant's pockets may have been discovered despite any police misconduct, we vacate the suppression order and remand for consideration of this matter in light of the inevitable discovery rule." People v Brzezinski, C/A No. 225395 (December 1, 2000)

Add to emergency exception on page 18-35

A 911 hang-up may not by itself allow for an entry into a house under the emergency exception.

📖 Officers were dispatched to a 911 hang-up call where there was no other information presented. The officers responded and as they approached, there was no sound coming from the residence and the home did not appear unusual in any way. The officers made contact with a subject who refused to allow them into the house. They did not see that anyone was in danger or that any crime was being committed. A woman did appear but did not appear to be injured. The officers entered and observed guns that were later reported to ATF. ATF obtained a warrant and seized a number of weapons and charged the homeowner with gun violations.

The court subsequently suppressed the guns and the charges because the officers failed to articulate that enough information to believe an emergency existed at the house when they entered. "The 911 call in this case announced no emergency. It was a hang-up call, which at most gave rise to the possibility of an emergency. When the officers arrived at the scene, they encountered denials from the occupants of the residence that an emergency existed. Of course, the officers were not obliged to take the word of the subjects that no mischief was afoot; yet without some positive indication to the contrary--some objective manifestation of the existence of an emergency situation demanding immediate action--the officers were not justified in physically intruding into the sanctity of the

home." United States v Meixner, No. 00-CR-20025-BC (E. D., Mich.)